

STEVEN L. BESHEAR  
GOVERNOR



RICHARD D. VANCE  
SECRETARY

COMMONWEALTH OF KENTUCKY  
**ENVIRONMENTAL AND PUBLIC PROTECTION CABINET**

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
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COMMISSIONERS  
DENISE MOORE DAVIDSON,  
CHAIR  
WILLIAM D. DONAN  
STAN CAVE

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**MINE SAFETY REVIEW COMMISSION MINUTES**

MINUTES OF THE REGULAR MEETING OF APRIL 18, 2008: A MEETING OF THE MINE SAFETY REVIEW COMMISSION (HEREINAFTER "MSCR" OR "COMMISSION") WAS HELD IN THE CONFERENCE AND HEARING ROOM OF THE COMMISSION LOCATED AT 132 BRIGHTON PARK BLVD., FRANKFORT KY.

- ❑ **Members Present:** Chair and Commissioner Denise Moore Davidson, Commissioner William D. Donan and Commissioner Stan Cave were present. Also in attendance was the MSRC Hearing Officer and General Counsel Bryon Alan Thompson.
- ❑ The meeting was **called to order** at 9:00 p.m. EST
- ❑ **Statements in regard to appointments:** Commissioner Cave stated that his appointment was effective by virtue of Senate action and the Constitution of the Commonwealth. Hon. Ellen Heslen, counsel for Gov. Beshear, stated that his appointment was not effective because it lacked House approval. Commissioner Cave declined participation until this issue is resolved. Hon. Cave left the meeting and a recess was called momentarily.
- ❑ **Declaration of a Quorum:** Upon the recall of the meeting, Commissioner Donan made a motion that a quorum was present, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.
- ❑ **Welcome Guests:** Counsel for the Kentucky Department of Natural Resources, Office of Legal Services was present representing the Office of Mine Safety and Licensing. General Counsel DNR Mike Haines, his assistant Kari Sutherland, and staff attorneys for OLS were present as counsel for OMSL.
- ❑ The **minutes** for the meeting on **03/13/08** were discussed. Commissioner Donan made a motion for approval, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the minutes.

**Motions - various;** *No motions were submitted for this meeting.*

- **OMSL Motions for Sanctions & Permanent Revocation for failure to comply with terms of the Settlement Agreement & Final Order by MSRC resolving KRS 351.120(12) workplace suspension for alcohol and substance abuse:**
- The similar cases of 07-MSRC-086 **Jesse D. Scott**, 07-MSRC-115 **Charles B. Sizemore** and 07-MSRC179 **Joshua D. Johnson** were called regarding OMSL's motion to permanently revoke each of their certifications for failure to comply with the Settlement Agreement. OMSL was represented by Hon. Haines. OMSL presented proof that each failed to complete the requirements they agreed to in their settlement agreement adopted as a final order of MSRC. None appeared or participated and were therefore unable to demonstrate compliance with the terms of their Settlement Agreements. Commissioner Donan made a motion to **grant** the motion to **permanently revoke**, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- The procedurally similar cases of 07-MSRC-123 **Phillip Hudson** and 07-MSRC-240 **Jody Duncan** were called. Each Respondent appeared and participated in the hearing. They demonstrated circumstances where they were in compliance with the Settlement Agreement incorporated as the Final Order of MSRC. Thus OMSL being informed at this hearing of the compliance moved to withdraw its motion for Sanctions. Commissioner Donan made a motion to **grant** the motion to **withdraw**, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- At the call of 07-MSRC-079 **Douglass Couch**, OMSL moved for a continuance to allow for further investigation. Commissioner Donan made a motion to **grant** the motion to **continue**, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **KRS 351.120(12) Petitions heard regarding miner appeals of workplace suspension for alcohol and substance abuse – “simple” revocations:**
- The Commission discussed the procedurally similar KRS 351.120(12) appeals of : 08-MSRC-243 **Jared Stanley**, 08-MSRC-057 **Chad Cupps**, 08-MSRC-067 **Travis White**, 08-MSRC-078 **Tommy Dewayne Seals**, 08-MSRC-089 **Johnny Ray Sexton**, and 08-MSRC-097 **Warren King** when called. They either appeared or phoned prior to the hearing and moved for **continuances** to Thursday **May 8**. Commissioner Donan so moved as to

each. These were seconded by Commissioner Davidson. The motions carried unanimously, and were so Ordered. Commissioner Davidson signed the Orders.

- The Commission discussed each in turn the procedurally similar KRS 351.120(12) appeals from suspensions for alcohol and substance abuse policy violations of 08-MSRC-056 **Tommy C. Adcox**, 08-MSRC-069 **Josh E. Anderson**; represented by Hon Mullins, 08-MSRC-070 **Ricky Mullins**, 08-MSRC-071 **Jamie Darren Hacker**, 08-MSRC-079 **Wesley Dale Bearden** 08-MSRC-080 **Charles Gibson**, 08-MSRC-096 **Billy A. Brown** 08-MSRC-106 **Christopher Turner**, 08-MSRC-107 **Billy J. Franks**; represented by Hon. Mullins, and 08-MSRC-109 **John W. Miller, Jr** in turn. Every one of these Petitioners appeared and tendered a **Settlement Agreement** and Motion to Approve the same. Commissioner Davidson requested and received a waiver from each Petitioner for the determinations on Turner and Miller citing a conflict. Commissioner Donan made a motion to **grant**, each of their settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- The Commission called also the KRS 351.120(12) Petition for Appeal of 07-MSRC-133 **Gary W. Pendergrass**, 07-MSRC-182 **Michael Beverly**, 08-MSRC-049 **Joseph Earl Carroll**, 08-MSRC-062 **Timothy Wayne Combs**, 08-MSRC-072 **Brian K. Charles**, 08-MSRC-073 **Matthew Terry**, and 08-MSRC-098 **Jeffrey Ratliff Jr.** who were duly notified and scheduled for the hearing *they* requested for this meeting. **None** of them **appeared** and were each Ordered to **Show Cause** as to why their certificates should not be revoked upon order at the next meeting. Commissioner Donan made the motion for Show Cause which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Orders.
- The Commission also considered 08-MSRC-037 **Earl Adkins, Jr.**, who failed to appear despite notice at the last meeting and also failed to appear, answer or participate in the Show Cause set for this meeting. Commissioner Donan made the motion to **revoke** which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for KRS 351.120(12) workplace alcohol and substance abuse suspensions that were not appealed – “simple” revocations:**

The Commission called and then granted the motions by OMSL for **revocation** in the following procedurally similar cases. No one appeared on behalf of any Respondent miner and no Respondent appeared despite notice by certified mail with a return as to each; 08-MSRC-074 **Joey Kelly**, 08-MSRC-075 **Ronnie Mills**, 08-MSRC-060 **Dana N. Howard**, 08-MSRC-061 **Joseph R. Hotzclaw**, 08-MSRC-065 **Paul Turner, Jr.**, 08-MSRC-066 **Allen L. Sturgeon, Jr.**, 08-MSRC-081 **Rodney Oliver**, 08-MSRC-082 **Jason P. Elkins**, 08-MSRC-083 **Jonathan E. Case**, 08-MSRC-084 **Larry W. Cobb**, 08-MSRC-086 **Jason T Howard**, 08-MSRC-087 **Travis G. Shortridge**, 08-MSRC-088 **Chadwick Fleming**, 08-MSRC-091 **David J. Bowling**, 08-MSRC-099 **Norman C. Couch**, 08-MSRC-101 **James Anthony Davis**, 08-MSRC-102 **Daniel K. Collins**, and 08-MSRC-103 **Paul W. Cupp**. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for Revocations which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.

- The Commission also ruled favorably on the proposed **settlement** tendered in the following OMSL Show Cause hearings for revocation: 07-MSRC-154 **Michael Anderson**, 08-MSRC-054 **Michael R. Lewis**, 08-MSRC-090 **Ronnie L. Caldwell** and 08-MSRC-100 **Mart T. Hall**. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- OMSL also moved to **continue** 08-MSRC-092 **Ernest W. Helton** and 08-MSRC-093 **Rodney K. Justice** to June 12, 2008 for further investigation. OMSL also moved to continue 08-MSRC-095 **James P. Owen** to May 8 to allow him to submit information from a test he alleges he took for Virginia. Commissioner Donan made a motion to **grant**, each of the OMSL Motion for settlements which were seconded as appropriate. The motions carried unanimously, and were so Ordered. Chair Davidson signed the Orders.
- OMSL moved for a **Show Cause** in 08-MSRC-094 **Kevin L. Slone** who returned a Settlement Agreement but failed to appear. Commissioner Donan made a motion to **grant**, the OMSL Motion which was seconded as appropriate. The motion carried unanimously, and was so Ordered. Chair Davidson signed the Order.

**The 11:00 a.m. Docket for “initial denial” pursuant to KRS 351.184(5) for failure of the pre-certification alcohol and substance abuse testing:**

*None were set for this meeting.*

### **The 11:00 a.m. Docket for Motions to Reconsider:**

- Counsel Hon. Roper in 06-MSRC-042 **Ralf Hurley** moved for a **settlement**. OMSL agreed and after questioning Hurley accepted the amended settlement agreement. Commissioner Donan made a motion to **grant** the motion, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.
- **Johnathan L. Fields** in 08-MSRC-041 and **Cory J. Leason** in 08-MSRC-010 appeared and were allowed to move to enter an **Amended Settlement Agreement** with increased testing protocol and other enhancements to the Settlement. Leason waived any conflict Davidson would have hearing his case. Commissioner Donan made a motion to **grant** the motion, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered upon the signature of Davidson.

### **The 11:00 a.m. Docket for “traditional” type cases:**

- Upon the call of 07-MSRC-099 **David C. Peters**, OMSL Counsel Hon. Haines informed the Commission that Respondent in the case had indicated that a continuance was needed because of the need for discovery. Upon that, the Commission determined that the case should be **continued** to the October 9, meeting to allow time for settlement. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.
- Upon the call of 08-MSRC-047 **Greg Davenport** the parties indicated that a Settlement Agreement was negotiated. The terms of the **settlement** was put into the record. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved, Davidson gave the second and signed the Order.

### **Petitions for an Order filed by OMSL in roof control cases:**

OMSL submitted a Petition for an Order in the roof control violation penalty type case 08-MSRC-115 **Solar Coal Company** and 08-MSRC-116 **Goose Creek Energy, Inc.**, which was not opposed by the Respondent. After consideration MSRC determined that this motion should be **granted**. Commissioner Donan so moved and Davidson signed the Order.

### **Old Business**

- ❑ **Ratification of Final Order:** The Commissioners ratified the Final Order in 07-MSRC-044 Millard Cecil Seals.

□ **Administrative Hearings Update;**

The Commission discussed briefly the continuing high number of cases set for the next meeting on Thursday May 8, and the likelihood of one traditional type hearing.

□ **Status Report & Abeyances;**

*None were scheduled for this meeting.*

□ **Appeals**

- The Commission discussed the appeal to Franklin Circuit Court of the Final Order in **Hobert Hoskins** 05-MSRC-007 now 05-CI-01702 in Division I. The Commission was informed that Judge Sheppard Ordered a briefing schedule. Counsel for OMSL is to file a Motion to Dismiss for the reason that the case is moot due to the passage of time exceeding the probationary period ordered with no further violations.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Willie “Tick” Sizemore**, et al. Hon. Haines, counsel for OMSL stated that they were awaiting an Order.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 05-MSRC-004 **Simon Ratliff**, and was informed that Hon. Barbara Pauley is filing a briefing schedule.
- The Commission discussed the status of the appeal to Franklin Circuit Court of 06-MSRC-005 **McCoy & Short**, 07-CI-1981, Division 1. The General Counsel Certified the record and sent the file to the Court.
- The Commission discussed the status of the appeal to Franklin Circuit Court of the Final Order in 04-MSRC-002 **Jerry J. Maggard**, et al. Hon. Smock, counsel for OMSL stated that they were briefing the matter.

## **New Business**

### **□ Office & Administrative;**

- The General Counsel advised that the **mileage** remains to forty five (45) cents per mile.
- JAVS, the manufacturer of the computerized court reporting system requested renewal of the routine maintenance and updates contract.

### **□ Training**

- **Required Hearing Officer Training:** Wednesday June 25 2008. Initial training. The required KYOAG annual training hearing officer for all MSRC Commissioners and the General counsel has been scheduled for **June 25, 2008**.
- **Executive Session:** The Commission adjourned to conduct an Executive session to discuss the Probable Cause Determinations and then reconvened to issue orders below as appropriate.

### **□ Probable Cause Determinations**

The following case was discussed and then the Commission determined that Probable Cause was appropriate: 08-MSRC-105 **McCarty, Hall & Howard**, 08-MSRC-122 **Fuller, Tackett & Tackett**, 08-MSRC-110 **Jacobs & Moore**, 08-MSRC-111 and for **Wolford, Adkins & Chapman**, 08-MSRC-128 **Johnson, et al**. Commissioner Donan so moved, Davidson gave the second and Davidson signed the Order.

### **□ Settlement Agreements**

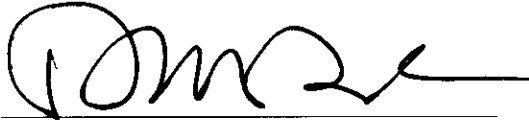
The Settlement Agreements were managed as indicated above in the Motions and suspensions sections.

- **The Time Memo and Travel Vouchers** were signed and submitted for payment by the General Counsel.
- **NEXT MEETING:** The Commissioners acknowledged that MSRC is regularly scheduled for a regular two day meeting on Starting on **Thursday May 8, 2008**.

- **Adjournment:** Commissioner Donan made a motion to adjourn, which was seconded by Commissioner Davidson. The motion carried unanimously, and was so Ordered.

The next meeting of the Mine Safety Review Commission will be held on Thursday May 8, 2008. The meeting will be held in the conference and hearing room of the Commission located at 132 Brighton Park Blvd., Frankfort KY.

Approved:



Chair Denise Moore Davidson  
Mine Safety Review Commission

5/8/08  
Date